

May 2, 2005

Gene Merriam, Commissioner  
MN Department of Natural Resources  
500 Lafayette Road, Box 37  
St. Paul, MN 55155

RE: In the Matter of the Appeal of the Trespass Citation Issued to James  
Arnold Forbes, Citation Number 40264, OAH Docket Number 15-2000-16500-2

Dear Commissioner Merriam:

On April 18, 2005, a prehearing conference was held in this matter by telephone to address the appeal of a civil citation for trespass. James A. Forbes and Conservation Officer Dennis Lang participated. The facts concerning the citation issued to Mr. Forbes for trespassing with his snowmobile on private property are not in dispute. However, Mr. Forbes and Officer Lang disagreed on the proper interpretation of the law related to posting of private property, and whether or not Mr. Forbes violated the law.

Because the facts were not in dispute, the parties agreed to submit the matter to me for decision without any further hearing.

The facts are as follows:

On February 5, 2005, at approximately 3:30 p.m., Officer Lang saw Mr. Forbes leave the designated snowmobile trail on the west side of County Road 5, in Becker County, about 1 mile north of County Road 4.<sup>[1]</sup> Mr. Forbes rode off the trail on to land owned by AFLC Wilderness Bible Camp. Photos #1 and #2 show the track where Mr. Forbes diverged from the designated trail. As shown in Photos #5 and #7, there was a small sign, facing the road, barring snowmobiles, attached to the AFLC Wilderness Bible Camp sign. There was also a diamond-shaped "reassuring blazer" on the left post of the Camp's sign, shown in Photos #3 and #4. There were no other signs on the Camp's property that prohibited snowmobiles. It is apparent that a snowmobile rider who left the trail at the point that Mr. Forbes left it would not have seen the small sign, but would have seen the blazer. Because of its angle, the sign prohibiting snowmobiles could be seen only from the designated trail and road at the point directly next to the side of the sign.

In his defense, Mr. Forbes relied upon Minn. Stat. § 84.90, subd. 3, which states:

Outside metropolitan area. Outside the seven county metropolitan area, no person shall enter on any land not owned by the person for the purpose of operating a recreational motor vehicle after being notified, either orally or by written or posted notice...not to do so.... [A]n owner, occupant or lessee may post any sign prohibiting recreational motor vehicles which has been adopted by rule of the commissioner of natural resources. The notice or sign shall be posted at the corners and ordinary ingress

and egress to the property and when so posted shall serve so as to raise a conclusive presumption that a person operating a recreational motor vehicle thereon had knowledge of entering upon such posted lands.

Mr. Forbes contended that he made an honest mistake because he did not see the sign, but that the sign was not properly placed, and there was a “reassuring blazer” on the left side of the camp sign. He does not believe that he should be fined for his mistake since the property was not properly marked. Officer Lang acknowledged that Mr. Forbes fully cooperated with the officer, and left the property upon learning that it was posted.

Officer Lang contended that other restrictions apply. Minnesota Stat. § 84.90, subd. 6 allows “any agency of the state to impose additional restrictions or prohibitions on the operation of recreation motor vehicles on property not owned by the operator in accordance with law.” He relied on Minn. R. 6100.4000 which states that a “[designated] trail shall not be used as an access to private lands without the consent of the landowner, lessee, occupant or agent.”<sup>[2]</sup> Additionally, subpart 2 states: “Failure to post private lands does not imply such consent for trail users.”

Under the facts of this case, the land was posted, but not “at the corners and ordinary ingress and egress to the property.” In addition, the location of the “reassuring blazer” on the left side of the sign was confusing. However, as stated by Officer Lang, the blazer is designed to show that a rider is still on trail, in this case, the designated trail that ran on the right hand side of the sign, next to the road. A “reassuring blazer” is not an indication of the right to enter onto private property.<sup>[3]</sup>

Thus, the question is whether provisions of the statute and rule prohibit entry onto private property, even though the property was not properly posted. Generally, where two provisions seem to conflict, the provisions must be read in a manner that will give effect to both.<sup>[4]</sup> In this instance, the rules provide guidance for interpreting possibly conflicting provisions: “Each component of the designated state recreational trail system shall be subject to the provisions of these parts, provided that in the event of conflict with some other law or rule of this state, the more restrictive provision will apply.”<sup>[5]</sup>

It is possible to read the statute § 84.90, subd. 3, and the rule, pt. 6100.4000, in a manner that gives effect to both: one can ordinarily enter unposted private lands unless one has notice that access is not allowed, but when entering from a designated trail, the presumption is the opposite – that no access from the designated trail onto private lands is permitted, regardless of whether the land is posted, absent specific consent. In this respect, the rule is more restrictive than the statute. However, as stated above, an agency of the state may “impose additional restrictions or prohibitions on the operation of recreational motor vehicles on property not owned by the operator in accordance with law.”<sup>[6]</sup> Duly promulgated rules have the force and effect of law.<sup>[7]</sup> Thus, the prohibition on entering private property from a designated trail is a lawful limitation on the right to enter private property with a snowmobile. This assures that the location and use of designated trails does not place a burden on the adjoining landowners to post their land. Thus, Mr. Forbes could not leave the designated trail and enter private land without specific consent.

Officer Lang relied on additional material from the “Minnesota Snowmobile – 2004-2005 Safety Laws, Rule & Regulations,” published by the Department of Natural Resources. On page 24, under the description of Minnesota Trespass Laws, it states: “Always respect private lands. ASK FIRST!” Always ask first before entering private lands even if it’s not posted. You

will improve relationships between landowners and snowmobilers. Just because property isn't posted that doesn't mean you have a right to enter someone else's private property. The posted signs indicate the landowner's intention to prevent unauthorized entry." In addition, on the following page, it states: "You may NOT ... Stray off the groomed portions of marked trails."

The message is clear, that it will improve relations between landowners and snowmobilers if permission is always requested. It is a courtesy to the landowners, even if the law does not always require it. However, the second statement is consistent with the rule prohibiting access to private property from a designated trail – one may not enter private property from a designated trail, absent the specific consent of the landowner.

Conclusion: The location of the sign prohibiting snowmobiles was not properly placed. However, one may not leave a designated trail and enter private property, regardless of whether the property is posted, without specific consent. Mr. Forbes left the designated trail and entered the camp property without permission. Thus he failed to comply with Minn. R. 6000.4000, subp. 1.

IT IS HEREBY RECOMMENDED: That the Commissioner AFFIRM the citation issued to Mr. Forbes on February 6, 2005, for a trespass occurring on February 5, 2005.

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order until at least five days after receipt of the report of the Administrative Law Judge. The persons to whom the order is issued may, within those five days, comment to the Commissioner and the Commissioner will consider the comments. The final order of the Commissioner may be appealed.<sup>[8]</sup>

Sincerely,

s/Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

Telephone: (612) 341-7606

BJH:nh

cc  
C.O. Dennis Lang  
James Arnold Forbes

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<sup>[1]</sup> Initial Complaint Report.

<sup>[2]</sup> The term "trail" is defined at Minn. R. 6100.3300, subp. 11.

<sup>[3]</sup> See, Minn. R. 6100.5300 ("Uniform signs").

<sup>[4]</sup> Minn. Stat. § 645.26, subd. 1.

<sup>[5]</sup> Minn. R. 6100.4100.

<sup>[6]</sup> Minn. Stat. § 84.90, subd. 6.

<sup>[7]</sup> Minn. Stat. § 14.38, subd. 1.

<sup>[8]</sup> Minn. Stat. §§ 14.63 and 14.69.